

House Bill 25
January 9, 2009
Presented by Bob Lane
House Natural Resources Committee

Chairman Milburn and committee members, I am Bob Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP).

Department of Fish, Wildlife and Parks (FWP) has been working with the Montana Department of Transportation (MDOT) to craft the language in the bill before you. Our efforts have been directed at:

- Creating a limited opportunity for the protection of water resources associated with certain restored wetlands;
- Allowing an exemption only where a water right is required as part of a "wetland mitigation" activity under the Federal Clean Water Act; and,
- Restricting the exemption to only the Montana Department of Transportation (MDOT).

This bill before you is a collaborative effort vetted before the Interim Water Policy Committee to address one of MDOT's wetland restoration and protection needs.

The proposed legislation creates another limited and defined exemption to the normal water right permitting process and requirements. The section of the Water Use Act being amended, 85-2-306 MCA, "Exceptions to Permit Requirements", is a provision that exempts certain water development / water use activities from the normal and more rigorous water right permitting processes found in title 85.

Water right activities provided for under 85-2-306 are intended to be small developments where a) there is a limited risk of impact to other water users, and b) quantities of water involved are small.

It is important for the committee to remember, that the exceptions to the normal water right processes granted in 85-2-306 are also exempt from the public notice, public participation and review criteria that are used to evaluate water availability and adverse affects to third parties. Under this proposal, the water use is developed, put to use and then a water right it automatically granted by DNRC.

Impacts on other users, should they occur, are addressed through legal action between the parties in the judicial system. There is no administrative relief. It is for these reasons that FWP has pushed to limit the scope and extent of the draft legislation.

This exemption is limited in an attempt to reduce impacts to other users while making simple restorations of drained wetlands easier for MDOT.